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AN ACT

RELATING TO LICENSING; CLARIFYING THE STATUTE OF LIMITATIONS ON BOARD
ACTIONS; PROVIDING SANCTIONS FOR UNLICENSED ACTIVITY BY A PERSON;
AMENDING AND ENACTING SECTIONS OF THE UNIFORM LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-1-3.1 NMSA 1978 (being Laws 1981, Chapter 349,
Section 3, as amended by Laws 1993, Chapter 218, Section 40 and also by Laws
1993, Chapter 295, Section 4) is amended to read:

"61-1-3.1. LIMITATIONS.--

A. An action that would have any of the effects specified in
Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to
unlicensed activity shall not be initiated by a board later than two years after the
discovery by the board of the conduct that would be the basis for the action, except as
provided in Subsection C of this section.

B. The time limitation contained in Subsection A of this section shall be
tolled by any civil or criminal litigation in which the licensee or applicant is a party
arising from substantially the same facts, conduct or transactions that would be the
basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not
initiate an action that would result in any of the actions specified in Subsections D
through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the
psychologist or psychologist associate that is the basis for the action. However, if the
conduct that is the basis for the action involves a minor or a person adjudicated
incompetent, the action shall be initiated, in the case of a minor, no later than one year
after the minor's eighteenth birthday or five years after the conduct, whichever is last
and, in the case of a person adjudicated incompetent, one year after the adjudication
of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico public accountancy board shall not initiate an

1 action under the 1999 Public Accountancy Act that would result in any of the actions
2 specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two
3 years following the discovery by the board of a violation of that act."

4 Section 2. Section 61-1-4 NMSA 1978 (being Laws 1957, Chapter 247,
5 Section 4, as amended) is amended to read:

6 "61-1-4. NOTICE OF CONTEMPLATED BOARD ACTION--REQUEST FOR
7 HEARING--NOTICE OF HEARING.--

8 A. For the purpose of investigating complaints against licensees, the
9 board may issue investigative subpoenas prior to the issuance of a notice of
10 contemplated action as provided in this section.

11 B. When a board contemplates taking any action of a type specified in
12 Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a
13 written notice containing a statement:

14 (1) that the applicant has failed to satisfy the board of his
15 qualifications to be examined or to be issued a license, as the case may be;

16 (2) indicating in what respects the applicant has failed to
17 satisfy the board;

18 (3) that the applicant may secure a hearing before the board
19 by depositing in the mail within twenty days after service of the notice a certified return
20 receipt requested letter addressed to the board and containing a request for a
21 hearing; and

22 (4) calling the applicant's attention to his rights under Section
23 61-1-8 NMSA 1978.

24 C. In any board proceeding to take any action of a type specified in
25 Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board
of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking any action of a type specified in
Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the
licensee a written notice containing a statement:

- 1 (1) that the board has sufficient evidence that, if not rebutted
- 2 or explained, will justify the board in taking the contemplated action;
- 3 (2) indicating the general nature of the evidence;
- 4 (3) that unless the licensee within twenty days after service of
- 5 the notice deposits in the mail a certified return receipt requested letter addressed to
- 6 the board and containing a request for a hearing, the board will take the contemplated
- 7 action; and
- 8 (4) calling the licensee's attention to his rights as provided in
- 9 Section 61-1-8 NMSA 1978.

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9 E. If the licensee or applicant does not mail a request for a hearing
10 within the time and in the manner required by this section, the board may take the
11 action contemplated in the notice and such action shall be final and not subject to
12 judicial review.

13 F. If the licensee or applicant does mail a request for a hearing as
14 required by this section, the board shall, within twenty days of receipt of the request,
15 notify the licensee or applicant of the time and place of hearing, the name of the
16 person who shall conduct the hearing for the board and the statutes and regulations
17 authorizing the board to take the contemplated action. The hearing shall be held not
18 more than sixty nor less than fifteen days from the date of service of the notice of
19 hearing.

20 G. Licensees shall bear all costs of disciplinary proceedings unless
21 they are excused by the board from paying all or part of the fees or if they prevail at
22 the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the
23 board."

24 Section 3. A new section of the Uniform Licensing Act is enacted to read:
25 "UNLICENSED ACTIVITY--DISCIPLINARY PROCEEDINGS--CIVIL PENALTY.--

26 A. A person who is not licensed to engage in a profession or
27 occupation regulated by a board is subject to disciplinary proceedings by the board.

28 B. A board may impose a civil penalty in an amount not to exceed one

1 thousand dollars (\$1,000) against a person who, without a license, engages in a
2 profession or occupation regulated by the board. In addition, the board may assess
3 the person for administrative costs, including investigative costs and the cost of
4 conducting a hearing."

5 Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act
6 is July 1, 2003.

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